

(b) The reasonable and necessary costs incurred in conducting assessments under this subpart shall be limited to those costs incurred or anticipated by the authorized official for, and specifically allocable to, incident-specific efforts taken in the assessment of damages for natural resources for which the agency or Indian tribe is acting as trustee. Such costs shall be supported by appropriate records and documentation, and shall not reflect regular activities performed by the agency or the Indian tribe in management of the natural resource. Activities undertaken as part of the damage assessment shall be taken in a manner that is cost-effective, as that phrase is used in this part.

[52 FR 9096, Mar. 20, 1987, as amended at 53 FR 5175, Feb. 22, 1988; 61 FR 20611, May 7, 1996; 62 FR 60459, Nov. 10, 1997; 65 FR 6014, Feb. 8, 2000]

§ 11.41 What data must the authorized official supply?

(a) The NRDAM/CME and the NRDAM/GLE require several data inputs to operate. The authorized official must develop the following data inputs:

- (1) The identity of the released substance;
- (2) The mass or volume of the identified substance that was released;
- (3) The duration of the release;
- (4) The time of the release;
- (5) The location of the release;
- (6) The wind conditions;
- (7) The extent of response actions;
- (8) The extent of any closures;
- (9) The implicit price deflator; and
- (10) For the NRDAM/CME, the condition of the currents and tides.

(b) The authorized official must change the data in the NRDAM/CME and the NRDAM/GLE for the following parameters if he or she is aware of more accurate data:

- (1) Air temperature;
- (2) Water temperature at the surface;
- (3) Total suspended sediment concentration;
- (4) Mean settling velocity of suspended solids; and
- (5) Habitat type.

(c)(1) If the release occurred in Alaska and the authorized official is not aware of any reliable evidence that ice was absent from the site of the release,

then he or she must turn on the ice modeling function. Otherwise, the authorized official must leave the ice modeling function off.

(2) If the release occurred in the Great Lakes and the authorized official is aware of reliable evidence that ice was absent from the site of the release, then he or she must turn off the ice modeling function.

(d) The authorized official must develop the data inputs and modifications and include them in the Assessment Plan in the format specified in Appendix II (for the NRDAM/CME) or Appendix III (for the NRDAM/GLE).

[61 FR 20611, May 7, 1996]

§ 11.42 How does the authorized official apply the NRDAM/CME or NRDAM/GLE?

(a) The authorized official must perform a preliminary application of the NRDAM/CME or NRDAM/GLE with the data inputs and modifications developed under § 11.41. Volume II of the NRDAM/CME technical document (incorporated by reference, see § 11.18) describes how to apply the NRDAM/CME. Volume II of the NRDAM/GLE technical document (incorporated by reference, see § 11.18) describes how to apply the NRDAM/GLE. For cases involving releases of two or more substances or a release of a mixture of substances, the authorized official may only apply the NRDAM/CME or NRDAM/GLE once using only one of the substances.

(b) If the preliminary application of the NRDAM/CME or NRDAM/GLE indicates damages in excess of \$100,000, then the authorized official must decide whether to:

- (1) Limit the portion of his or her claim calculated with the type A procedure to \$100,000; or
- (2) Compute all damages using type B procedures.

[61 FR 20611, May 7, 1996]

§ 11.43 Can interested parties review the results of the preliminary application?

After completing the preliminary application of the NRDAM/CME or NRDAM/GLE, if the authorized official decides to continue with the type A

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procedure, he or she must issue an Assessment Plan for public comment as described in § 11.32. The Assessment Plan must include the information described in § 11.31, the data inputs and modifications developed under § 11.41, and a summary of the results of the preliminary application. The Assessment Plan must also identify a contact from whom a complete copy of the printout of the preliminary application can be obtained.

[61 FR 20612, May 7, 1996]

§ 11.44 What does the authorized official do after the close of the comment period?

(a) The authorized official must carefully review all comments received on the Assessment Plan, provide substantive responses to all comments, and modify the Plan as appropriate. [See § 11.32(e)(2) to determine if the authorized official must provide for additional public review.]

(b) If, after reviewing the public comments, the authorized official decides to continue with the type A procedure, he or she must then perform a final application of the NRDAM/CME or NRDAM/GLE, using final data inputs and modifications based on § 11.41 and any reliable information received during the public review and comment period.

(c) After completing the final application of the NRDAM/CME or NRDAM/GLE, the authorized official must prepare a Report of Assessment. The Report of Assessment must include the printed output from the final application as well as the Preassessment Screen Determination and the Assessment Plan.

(d) If the authorized official is aware of reliable evidence that a private party has recovered damages for commercial harvests lost as a result of the release, the authorized official must eliminate from the claim any damages for such lost harvests that are included in the lost economic rent calculated by the NRDAM/CME or NRDAM/GLE.

(e) If the authorized official is aware of reliable evidence that the NRDAM/CME or NRDAM/GLE application covers resources beyond his or her trustee jurisdiction, the authorized official must either:

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(1) Have the other authorized official(s) who do have trustee jurisdiction over those resources join in the type A assessment; or

(2) Eliminate any damages for those resources from the claim for damages.

(f) If the final application of the NRDAM/CME or NRDAM/GLE, adjusted as needed under paragraphs (d) and (e), calculates damages in excess of \$100,000, then the authorized official must limit the portion of his or her claim calculated with the type A procedure to \$100,000.

(g) After preparing the Report of Assessment, the authorized official must follow the steps described in subpart F.

[61 FR 20612, May 7, 1996]

Subpart E—Type B Procedures

§ 11.60 Type B assessments—general.

(a) *Purpose.* The purpose of the type B assessment is to provide alternative methodologies for conducting natural resource damage assessments in individual cases.

(b) *Steps in the type B assessment.* The type B assessment consists of three phases: § 11.61—Injury Determination; § 11.70—Quantification; and § 11.80—Damage Determination, of this part.

(c) *Completion of type B assessment.* After completion of the type B assessment, a Report of Assessment, as described in § 11.90 of this part, shall be prepared. The Report of Assessment shall include the determinations made in each phase.

(d) *Type B assessment costs.* (1) The following categories of reasonable and necessary costs may be incurred in the assessment phase of the damage assessment:

(i) Sampling, testing, and evaluation costs for injury and pathway determination;

(ii) Quantification costs (including baseline service determination and resource recoverability analysis);

(iii) Restoration and Compensation Determination Plan development costs including:

(A) Development of alternatives;

(B) Evaluation of alternatives;

(C) Potentially responsible party, agency, and public reviews;

(D) Other such costs for activities authorized by § 11.81 of this part;